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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,908	01/23/2004	Jason M. Benz	BUR920030121US1	1907
29154	7590	06/22/2007		
FREDERICK W. GIBB, III Gibb & Rahman, LLC 2568-A RIVA ROAD SUITE 304 ANNAPOLIS, MD 21401			EXAMINER RUGGLES, JOHN S	
			ART UNIT 1756	PAPER NUMBER
			MAIL DATE 06/22/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/707,908</p>	<p><b>Applicant(s)</b> BENZ, JASON M.</p>	
	<p><b>Examiner</b> John Ruggles</p>	<p><b>Art Unit</b> 1756</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 06 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: none.  
Claim(s) objected to: 8,10-12 and 25.  
Claim(s) rejected: 1,3-5,8,10-12,15,17,18 and 21-26.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

Continuation of 3. NOTE: The proposed amendment will not be entered, because: (1) it is non-compliant for the reason given in the attached Notice of Non-compliant Amendment (PTOL-324); (2) it is non-responsive to the previous 4/20/07 final rejection (a) of claims 1, 3-5, 15, 17-18, 24, and 26 under 35 USC 103 over Dao et al. and Schroeder et al. (as set forth on pages 4-7 of this final rejection), (b) of claim 22 under 35 USC 103 over Dao et al., Schroeder et al., and Tzu et al. in view of either Levenson, Rolfson, or Applicant's admitted prior art (AAPA), and further in view of Sandstrom (as set forth on pages 11-12 of this final rejection); and (3) it does not place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

Continuation of 11. does NOT place the application in condition for allowance because: the proposed amendment has not been entered, since it is non-compliant, non-responsive, and does not place the application in better form for appeal by materially reducing or simplifying the issues for appeal, as indicated above.

Applicant's currently proposed arguments against the previous 4/20/07 final rejection are still not persuasive. In particular, (A) on page 8 in response to the 4/20/07 new matter rejection under the 1st paragraph of 35 USC 112, Applicant relies on the removal of additional opaque material 112 in the second region 116 shown by Figure 5B for supporting the attack of the substrate 110 during the additional patterning step as recited in claims 21-23, but Applicant still fails to show any original support for actual "attack" of the substrate 110 during this additional patterning step that really only removes additional opaque material 112 in the second region 116.

(B) on pages 9-22 of the currently proposed response, Applicant is clearly mistaken and proposes to advance misdirected arguments against specific grounds of rejection and combinations of references that were NOT relied upon in the remaining 35 USC 103 rejections of the 4/20/07 FINAL rejection. For example, the following rejections were NOT relied upon: (I) claims 1, 3-6, 15, and 17-19 under 35 USC 102(b) over Dao et al. alone and (II) these same claims under 35 USC 102(e) over Schroeder et al. alone; (III) claims 8 and 10-13 under 35 USC 103 over either Dao et al. or Schroeder et al. in view of Tzu et al. and (IV) for these same claims under 35 USC 103 over either Dao et al. or Schroeder et al. in view of Tzu et al. and either Levenson, Rolfson, or AAPA, (V) claims 21 and 23 under 35 USC 103 over either Dao et al. or Schroeder et al. and either Levenson, Rolfson, or AAPA in view of Sandstrom; and (VI) claim 22 under 35 USC 103 over either Dao et al. or Schroeder et al. in view of Tzu et al., either Levenson, Rolfson, or AAPA, and Sandstrom. In fact, it is noted that at least claims 6, 13, and 19 were each previously canceled at the time of the final rejection, so these claims were certainly not rejected over the prior art therein.

It is not understood why Applicant has now failed twice to carefully review the specific prior art rejections actually set forth in the outstanding FINAL Office action. Therefore, the currently proposed 6/6/07 arguments are again NOT found to be credible and are clearly still non-responsive to the outstanding FINAL Office action.

jsr  
571-272-1390

  
MARK F. HUFF  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

**Notice of Non-Compliant  
Amendment (37 CFR 1.121)**

Application No.

10/707,908

Examiner

John Ruggles

Applicant(s)

BENZ, JASON M.

Art Unit

1756

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 06 June 2007 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☐ C. Other \_\_\_\_\_.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☒ E. Other: See Continuation Sheet.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):  
\_\_\_\_\_

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

**TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:**

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

MARK F. HUFF

Telephone No.



Continuation of 4(e) Other: the proposed amendment of claim 8 shows changes that are not made with respect to the last entered amendment filed on 2/2/07.